



BEFORE THE STATE BOARD OF EQUALIZATION'
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 ROLANDO V. JIMENEZ)

Opinion on Petition for Rehearing

On April 8, 1980, we sustained the Franchise Tax' Board's assessment of additional tax and penalties against **Rolando V. Jimenez** in the total amount of \$489.80 for the year 1977. Our decision at that time was predicated on Mr. **Jimenez's** failure to demonstrate that any part of respondent Franchise Tax Board's action was incorrect. Subsequently, however, Mr. Jimenez filed a timely petition for rehearing which contained evidence sufficient to establish some error in respondent's determination. Accordingly, as explained below, our original opinion and order in this case will be modified.

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First, appellant has established that he is entitled to dependent credits for his three ~~minor~~ children (aged 15, 14, and 9 during the year in question), who resided with appellant and his wife (their parents) during 1977. This is not a case where someone else has made an inconsistent claim to dependent credits for these children.

Second, appellant has shown that he is entitled to a withholding credit in the amount of \$190.60. The evidence appellant has presented indicates that respondent has taxed him on the community property earnings of his wife Leticia from the Community Hospital of San Diego. (Rev. & Tax. Code, § 18555, subd. (a).) That being so, respondent cannot deny him credit for the tax withheld from those earnings by the hospital. (See Rev. & Tax. Code, § 18551.1, subd. (a).)

Finally, appellant continues to argue that his liability- should be computed as if he and his wife had filed a joint return. They did not so file, however, and respondent was therefore entitled to treat appellant as a married person filing a separate return. Appellant did file a Form 540 which he and his wife both signed, but it was not a "return" because it did not contain the required financial information. (Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.)

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS **HEREBY** ORDERED, ADJUDGED AND DECREED,. pursuant to section 18596 of the Revenue and Taxation Code, that our order of April 8, 1980, in the matter of the Appeal of **Rolando V. Jimenez** be modified to allow three dependent credits and a withholding credit of \$190.00. In all other respects, our order of April 8, 1980, is affirmed.

Done at Sacramento, California, this 9th day of December, 1980, by the **State Board** of Equalization, with **Members Nevins, Bennett, Reilly and Dronenburg** present.

<u>Richard Nevins</u>	, Chairman
<u>George R. Reilly</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>William M. Bennett</u>	, Member
<u></u>	, Member